

REMARKS

Claims 1-48 are all the claims pending in the application.¹

Applicants hereby affirm the election to prosecute the invention of Group 1 corresponding to claims 1-33 of the application. By way of this amendment, Applicants have canceled claim 33 to overcome the rejections thereto under §§ 112 and 101 and have cancelled withdrawn claims 34-48.

Claims 1-32 have been rejected under section 103(a) as being unpatentable over Bernatz (U.S. Patent No. 6,551,643) in view of Phillips (U.S. Patent No. 4,117,645) and Corriveau (WO 03011045). For the following reasons, Applicants respectfully traverse this rejection.

As a preliminary matter, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness. This is because the Examiner has failed to articulate the motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the references teachings. See MPEP § 2142. For example, the Examiner states “Therefore, it would have been to obvious to press a composition as disclosed by Corriveau in the process of Bernats et al.” However, as can be from the explanation, the Examiner failed to explain why this modification would have been obvious to one of ordinary skill in the art. In other words, the Examiner has failed to explain why a person of ordinary skill in the art would have found it obvious to make this modification. The same is true with respect to the teachings of Phillips. Specifically, in applying the teachings

¹ The Office Action states that claims 1-47 are pending. However, as originally filed there were two claims identified as claim number 42. Thus, in the Preliminary Amendment Applicants renumbered claims 42-47 as claims 42-48.

of Phillips, the Examiner states “Therefore, it would have been obvious further process gum pellets or granules as shown by Phillips in the process of Bernats et al.” Again, the Examiner has failed to articulate exactly why this would have been obvious to one of ordinary skill in the art (i.e., why a person of ordinary skill in the art would have been motivated to make this modification to the Bernats et al. process). On this basis alone, the Applicants respectfully submit that the Examiner’s obviousness rejection cannot stand.

Furthermore, Applicants submit that the prior art fails to teach or suggest the claimed invention and, furthermore, fails to provide any motivation for modifying the Bernats et al. process to arrive at the claimed process.

More specifically, Bernats discloses a process and apparatus for producing miniature gum ball centers, and it is clearly stated that the miniature gum balls are the final product (see e.g. fig 2, ref 68 and abstract), i.e. the miniature gum balls are the object to be achieved by Bernats. Thus, there is no incentive for a skilled person to combine the teaching of Bernats with, e.g., the teaching of Corriveau.

Please note that the gum granules according to the present invention comprise 71-99% gum base. This is a surprisingly high content of gum base as, in normal gum formulations, one tends to have a gum base content in the range of about 25-35% to avoid a formulation having a high tackiness. It was not expected that it was possible to press gum granules with such high content of gum base in a tablet-pressing machine, as it was expected that the granules would stick to the surfaces of the pressing machine. Bernats mentions a gum base content of 70% (table 1, example 1). However, Bernats does certainly not suggest pressing this formulation in a tablet-pressing machine.

Corriveau is silent about the gum base content but mentions that a gum component comprises about 40 to 60% of the tabletted gum (claim 4). In paragraph 42 and 43, it can be seen that the gum component is constituted by gum base and several other constituents, e.g. bulk sweetener, corn syrup and softeners. Thus, the gum base content in the gum component is not very high. If the content of bulk sweetener is in the range of 60-80% (paragraph 42), the gum base content is limited to be maximum 40 %.

Phillips relates to a method for transporting gum base to and storing it at chewing gum manufacturers. The gum base is transported and stored as pellets in water. Before use, the pellets are de-watered and mixed with other ingredients and formed into traditional coherent chewing gum. Thus, the method disclosed in Phillips is an intermediate process step in the production of chewing gum and Phillips provides no information that would motivate a skilled person to press the pellets in a table pressing machine to form tabletted chewing gum pieces intended for the final user.

In view of the foregoing, as respectfully submitted that all claims pending application are allowable. This therefore requests that the application be passed to issue at the earliest possible convenience.

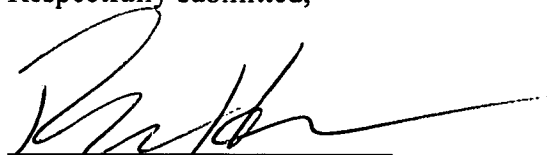
In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Application No.: 10/609,497

Q76406

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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